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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 GARY DIAZ,

11 Plaintiff,

12 v.

13 WELLS FARGO BANK, N.A., INC., *et*  
14 *al.*,

15 Defendants.

Case No. 2:11-CV-01219-KJD-CWH

**ORDER**

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17 Before the Court for consideration is the Finding & Recommendation (#4) of Magistrate  
18 Judge Carl W. Hoffman entered on January 24, 2012. Judge Hoffman recommend that Plaintiff's  
19 Complaint be dismissed with prejudice because he failed to comply with the Court's order to pay the  
20 filing fee within 30 days of the Court's order denying his application to proceed *In Forma Pauperis*  
21 ("IFP").

22 Plaintiff filed an Objection (#5) arguing that he had not received a copy of the order denying  
23 his IFP and that the Complaint should not be dismissed with prejudice..

24 The Court has conducted a *de novo* review of the record in this case in accordance with 28  
25 U.S.C. § 636(b)(1) and LR IB 3-2. The Docket reflects that the order denying the IFP was delivered  
26 to Plaintiff's address of record. Accordingly, the Court adopts the Report and Recommendation that

1 the Complaint should be dismissed. However, the Court does not adopt the recommendation that the  
2 Complaint be dismissed with prejudice.

3 Accordingly, **IT IS HERE BY ORDERED** that the Report & Recommendation (#5) of the  
4 United States Magistrate Judge entered January 24, 2012, should be **ADOPTED** and **AFFIRMED**  
5 as to the dismissal of the action only.

6 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice.

7 DATED this 31<sup>st</sup> day of July 2012.

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Kent J. Dawson  
United States District Judge  
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